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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

CHERYL LYN BRADLEY,

Defendant and Appellant.

B146460

(Super. Ct. No. SA038188)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Leslie W. Light, Judge. Affirmed with directions.

Janice Wellborn, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, William T. Harter, Margaret E. Maxwell, Supervising Deputy Attorneys General, Jeffrey A. Hoskinson, Deputy Attorney General, for Plaintiff and Respondent.

Defendant, Cheryl Lyn Bradley, appeals from her convictions for: three counts of first degree residential burglary (Pen. Code,¹ § 459); three counts of second degree burglary (§ 459); and three counts of forgery. (§ 470, subd. (d).) Defendant was also found to have served a prior prison term. (§ 667.5, subd. (b).) Defendant's sole argument on appeal is that the trial court improperly instructed the jury with CALJIC No. 17.41.1. We affirm and correct the abstract of judgment to more accurately reflect the sentence imposed by the trial court.

We view the evidence in a light most favorable to the judgment. (*Jackson v. Virginia* (1979) 443 U.S. 307, 319; *People v. Osband* (1996) 13 Cal.4th 622, 690; *Taylor v. Stainer* (9th Cir. 1994) 31 F.3d 907, 908-909.) On February 1, 2000, defendant was found asleep in Mohamad Mahdy's apartment. Mr. Mahdy had been out and returned to find the apartment ransacked. Several of his possessions were on the floor of his bedroom. The wrought iron bars of his window had been pried open. On July 10, 1999, defendant entered the home of Judith and Yoav Bothach. Defendant was confronted by Mr. and Mrs. Bothach. Defendant then struggled physically with Mr. Bothach. Defendant was able to free herself and flee. On October 11, 1999, Sylvia Gutierrez saw defendant. Ms. Gutierrez heard a sound at her bathroom window. Ms. Gutierrez looked out the bathroom window. Ms. Gutierrez described what she saw as follows, "I seen [defendant] trying to get into my house, like kind of peeking her head in." Ms. Gutierrez said she was going to call the police. Defendant then fled. Ms. Gutierrez later discovered two stereo speakers had been taken from her car. Finally, defendant cashed three checks stolen from Chatman Insurance Services at a Bank of America.

Defendant argues the trial court improperly instructed the jury with CALJIC No. 17.41.1 because it: "compromises the private . . . character of jury deliberations[;]" constitutes "an impermissible anti-nullification instruction[;]" violated the jurors' right to freedom of speech and association; and violated her rights to due process and a jury trial. CALJIC No. 17.41.1 was given as follows: "The integrity of a trial requires that jurors at

¹ All further statutory references are to the Penal Code unless otherwise indicated.

all times during their deliberations conduct themselves as required by these instructions. [¶] Accordingly, should it occur that any juror refuses to deliberate, or expresses an intention to disregard the law, or to decide the case based on penalty or punishment, or any other improper basis, it is the obligation of the other jurors to immediately advise the court of the situation.”

To begin with, there is no juror nullification right. (*People v. Williams* (2001) 25 Cal.4th 441, 463; *People v. Brown* (2001) 91 Cal.App.4th 256, 270-271.) As was recently pointed out in *People v. Cline* (1998) 60 Cal.App.4th 1327, 1335: “Courts have long recognized that ‘a jury, in rendering a general verdict in a criminal case, necessarily has the naked *power* to decide all the questions arising on the general issue of not guilty; but it only has the *right* to find the facts, and apply to them the law as given by the court.’ (*People v. Lem You* (1893) 97 Cal. 224, 228 [], . . . overruled on another ground in *People v. Kobrin* (1995) 11 Cal.4th 416, 427, fn. 7 [].) Because juries have no right to disregard the court’s instructions, it is inappropriate to instruct juries on their power to nullify the law. [Citation.]” (Original italics; *People v. Nichols* (1997) 54 Cal.App.4th 21, 24-26.) Moreover, as the California Supreme Court recently noted: “The need to protect the sanctity of jury deliberations, however, does not preclude reasonable inquiry by the court into allegations of misconduct during deliberations.” (*People v. Cleveland* (2001) 25 Cal.4th 466, 476.)

With those precepts in mind, we turn to the instructions in question. The California Supreme Court has held: “[T]he correctness of jury instructions is to be determined from the entire charge of the court, not from a consideration of parts of an instruction or from a particular instruction. [Citations.]” (*People v. Burgener* (1986) 41 Cal.3d 505, 538-539, disapproved on another point in *People v. Reyes* (1998) 19 Cal.4th 743, 750-754, 756; *People v. Holt* (1997) 15 Cal.4th 619, 677 [instructions are not considered in isolation].) Much of CALJIC No. 17.41.1 reiterates other properly given instructions. For instance, CALJIC No. 1.00 instructed the jury to follow the law as it was given to them by the trial court. CALJIC No. 17.40 instructed the jurors to deliberate by discussing the evidence and instructions with the other jurors. Pursuant to

CALJIC No. 17.42 the jury was properly instructed not to discuss or consider penalty or punishment or allow these subjects to in any way affect their verdict. (See *People v. Allison* (1989) 48 Cal.3d 879, 892, fn. 4; *People v. Hill* (1992) 3 Cal.App.4th 16, 46, disapproved on another point in *People v. Nesler* (1997) 16 Cal.4th 561, 582, fn. 5.) Finally, pursuant to CALJIC No. 1.03, they were instructed: “You must not independently investigate the facts or the law, or consider or discuss facts as to which there is no evidence. This means, for example, you must not on your own visit the scene, conduct experiments, or consult reference works or persons for additional information.”

When the instructions are taken as a whole, there is no likelihood the jurors’ duty to find guilt beyond a reasonable doubt was undermined by CALJIC No. 17.41.1. There was no likelihood the instructions as a whole misled the jurors. Defendant’s contention to the contrary is without merit. (See *Boyde v. California* (1990) 494 U.S. 370, 380; *People v. Holt, supra*, 15 Cal.4th at p. 677; *People v. Burgener, supra*, 41 Cal.3d at pp. 538-539.) Finally, under any standard of reversible error, the alleged error was entirely harmless given the uncontradicted nature of the overwhelming and conclusive proof of guilt. (*Chapman v. California* (1967) 386 U.S. 18, 22; *People v. Watson* (1956) 46 Cal.2d 818, 836; see also *People v. Molina* (2000) 82 Cal.App.4th 1329, 1335-1336.)

At the time of sentencing, the trial court imposed specific terms of eight months consecutive as to each of counts 6, 8, and 10. The trial court then stayed those sentences pursuant to section 654. However, the abstract of judgment does not reflect the length of the sentence imposed and stayed. California Rules of Court, Rule 12 (b) provides in pertinent part: “If any material part of the record . . . is incorrect in any respect, . . . the reviewing court, on suggestion of any party or on its own motion, may direct that it be corrected” As a general rule, the record will be harmonized when it is conflict. (*People v. Smith* (1983) 33 Cal.3d 596, 599; *In re Evans* (1945) 70 Cal.App.2d 213, 216.) “[A] discrepancy between the judgment as orally pronounced and as entered in the minutes is presumably the result of clerical error.”; (*People v. Williams* (1980) 103 Cal.App.3d 507, 517, quoting the Los Angeles Superior Court Criminal Trial Judge’s Bench Book at page 452; see also *In re Daoud* (1976) 16 Cal.3d 879, 882, fn. 1 [trial

court could properly correct a clerical error in a minute order *nunc pro tunc* to conform to the oral order of that date if there was a discrepancy between the two]; § 1207; see also *People v. Mitchell* (2001) 26 Cal.4th 181, 185-186 [appellate court may order trial court to correct discrepancy between the trial court's judgment and the abstract of judgment].) The clerk of the superior court is to correct the abstract of judgment to reflect the length of all of the sentences including those which were stayed and forward a corrected copy to the Department of Corrections.

The clerk of the superior court shall prepare a corrected abstract of judgment as set forth above and forward a copy to the Department of Corrections. The judgment is affirmed in all other respects.

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TURNER, P.J.

We concur:

GRIGNON, J.

ARMSTRONG, J.